

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

BV RIGHTS ANSTALT,

Plaintiff,

v.

ABAXIS INC,

Defendant.

No. C-04-04839 SC (EDL)

**ORDER GRANTING IN PART
ABAXIS, INC.'S MOTION TO
COMPEL FURTHER RESPONSES TO
ABAXIS, INC.'S FIRST SET OF
REQUESTS FOR PRODUCTION OF
DOCUMENTS AND TANGIBLE
THINGS**

The Motion to Compel Further Responses to Abaxis, Inc.'s First Set of Requests for Production of Documents and Tangible Things ("Motion to Compel") came before the above-captioned court on January 17, 2006, the Honorable Elizabeth D. Laporte, Magistrate Judge, presiding. Diana Fung of DLA Piper Rudnick Gray Cary US LLP appeared on behalf of defendant and counterclaimant Abaxis, Inc. ("Abaxis"). Jethro Busch of Luscutoff, Lendormy & Associates appeared on behalf of plaintiff and counterdefendant BV Rights Anstalt ("BV Rights"). The Court, having considered the papers submitted and arguments presented thereon, and good cause appearing therein, HEREBY ORDERS THAT the Motion to Compel is GRANTED in part.

IT IS FURTHER ORDERED that BV Rights serve further written responses and documents responsive to Abaxis' First Set of Requests for Production of Documents and Tangible Things ("RFP") Nos. 1-6, 9-11, 13-47, 53-54, 60, 63-64, and 66-70 by February 16, 2006.

IT IS FURTHER ORDERED that the time period encompassed by RFP Nos. 9-11 is limited to the time period of January 1, 1995 through April 7, 2004, and the time period

1 encompassed by RFP Nos. 27-29, and 42 is limited to the time period of January 1, 1999 through
2 April 7, 2004. The time period encompassed by RFP Nos. 5-6, 13-20, 36, and 39-40 is January 1,
3 1995 to the present, and the time period encompassed by RFP Nos. 1-4, 21-26, and 30-34 is
4 January 1, 1999 to the present. With respect to RFP Nos. 35, 37-38, 41, 43-47, 53-54, 60, 63-64,
5 and 66-70, there is no limitation as to time.

6 IT IS FURTHER ORDERED that BV Rights shall provide the confirmation (in the form
7 of a verified declaration from the appropriate BV Rights representative with personal knowledge)
8 and privilege log required under paragraphs 5 and 6 of the Court's Order re Discovery Procedures
9 by February 16, 2006.

10 IT IS FURTHER ORDERED that Abaxis shall provide BV Rights with revised definitions
11 of the following terms defined in the RFPs—"Abaxis," "BV Rights," "Melet," and the "Melet
12 Companies"—that are limited to identified entities and individuals believed to be affiliated with
13 these respective entities. BV Rights shall provide supplemental responses to the RFPs utilizing
14 these revised definitions. This Order is made without prejudice to Abaxis' right to request
15 additional discovery with respect to other entities or individuals affiliated with "BV Rights,"
16 "Melet," and/or the "Melet Companies" should the identity of such other entities or individuals
17 become available to Abaxis at a later time.

18 IT IS FURTHER ORDERED that BV Rights shall not withhold documents responsive to
19 the RFPs based upon its invocation of trade secrets, privacy, and/or taxpayers privileges because
20 such documents, if necessary, can be adequately protected by the Stipulated Protective Order
21 entered on December 10, 2004 in this action. Furthermore, the trade secrets privilege does not
22 apply because there is no pending trade secrets claim to this case. Federal privilege law governs
23 the RFPs, because the RFPs do not seek discovery relevant solely to the state law claims asserted
24 in this action, but also to the federal law claims.

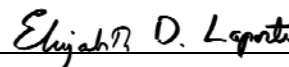
25 IT IS FURTHER ORDERED that the RFPs identified below—and BV Rights'
26 supplemental responses thereto—shall be limited in scope as follows:
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1. As to RFP No. 1, BV Rights shall produce documents sufficient to show the corporate structure and/or organization of BV Rights;
2. As to RFP No. 2, BV Rights shall produce documents sufficient to show the owners of BV Rights;
3. As to RFP No. 5, BV Rights shall produce documents sufficient to show the number of transfers of BV Rights' assets or liabilities to the Melet Companies; and
4. As to RFP No. 6, BV Rights shall produce documents sufficient to show the number of transfers of the Melet Companies' assets or liabilities to BV Rights.

This Order shall be subject to any stipulation between the parties regarding a standstill for all deadlines in this case entered into after the January 17, 2006 hearing.

IT IS SO ORDERED.

Dated: January 27, 2006



ELIZABETH D. LAPORTE

United States Magistrate Judge